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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 463 OF 2005

Mr. S.N. Pushkarna

...Applicant.

V/s

1. M/s. Govindji Trikamdas
Exports Ltd. & Anr.

...Respondents.

ALONG WITH
CRIMINAL APPLICATION NO.464 OF 2005

Mr. S.N. Pushkarna

...Applicant.

V/s

1. M/s. Fortis Financial
Services Ltd.

...Respondents.

Mr. A.R. Pnady with Mr. Rajendra Prasad Oza for the
applicant in both the applications.

Mr. A.S. Shitole APP for the State in both the
applications.

CORAM: V.M.KANADE,J.

DATE: 17th March, 2005

P.C.:

1. Heard the learned counsel for the applicant.

2. Since the question raised in both these
applications is identical, they are being disposed of
by this common order.

3. Applicant is challenging the issuance of process
by the Metropolitan Magistrate, 47th Court, Esplanade
in Case No.2333/S/2003 and 2436/S/ 2002 filed by

respondent No.1 under section 138 read with section 141 of the Negotiable Instruments Act.

4. Brief facts are that the respondent No.1 filed a complaint in the Court of Metropolitan Magistrate in which it is alleged that the accused Nos. 2 to 6 are Directors of accused No.1 and they were in charge and responsible for conduct of business of accused No.1 at the relevant time. It is further stated that accused No.2 is a Managing Director of accused No.1 and accused Nos. 3 to 6 are the Directors of accused No.1 and are taking active interest in day-to-day transactions of accused No.1. It is further stated in para 2 that a sum of Rs 10 lakhs was advanced to the accused No.1 by the complainant - company as inter-corporate deposit on/or about 20/12/1995. It is further stated that the accused Nos. 1 and 2 have executed various documents and that accused No.2 has also executed personal guarantee for repayment of the said amount. It is further stated that the cheque was deposited in the Bank. However, the cheque was dishonoured with the remark "Exceed Arrangement".

5. In para 15 of the complaint, it is again reiterated that the accused Nos. 2 to 6 are and were in charge of and responsible to accused No.1 for

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conduct of its business at the relevant time and, therefore, deemed to be guilty of the said offence. The submission of the learned Counsel appearing on behalf of the applicant that there are no averments in the complaint so far as the applicant - accused is concerned, therefore, cannot be accepted. There are sufficient averments to show the prima facie involvement of the applicant - accused in the commission of the said offence. At this stage, it will not be possible to come to the conclusion that the applicant is not liable under the provisions of section 138 read with section 141 of the Negotiable Instruments Act. All the questions raised by the applicant in both these applications are kept open and the same shall be decided by the Trial Court after the evidence is adduced by both the parties. Trial Court to decide the case expeditiously.

6. Both the applications are accordingly dismissed.

V.M. KANADE, J.